

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.13.401, 42.13.402, and ) PROPOSED AMENDMENT  
42.13.404 relating to wine importation )  
and licensee reporting requirements )

TO: All Concerned Persons

1. On November 12, 2013, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 1, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.13.401 IMPORTATION OF WINE (1) ~~Each~~ A foreign winery or importer, ~~not otherwise licensed in Montana,~~ desiring to ship table wines ~~wine to licensed distributors within the state~~ Montana must submit an application for registration to the department as specified in 16-4-107, MCA. ~~Each product the winery or importer desires to ship must conform to the provisions of ARM 42.13.201. Each application must be~~ The registration must be renewed annually by October 1 and be accompanied by the applicable registration fee shown in (2)(3).

(2) Each product the foreign winery or importer desires to ship must conform to the provisions of ARM 42.13.201.

(2)(3) The For the first year, the registration fee shall be is based on the total number of cases the registrant intends to ship to Montana that year. For subsequent years, the registration fee is based on the total number of cases the registrant actually shipped to Montana during the preceding year. The registration fee schedule is as follows:

- (a) 0-60 cases = no charge;
- (b) 61-500 cases = \$25;
- (c) 501-1000 cases = \$50;
- (d) 1001-1500 cases = \$100;
- (e) 1501-2000 cases = \$200; or
- (f) 2001 + cases = \$400.

(4) A winery that desires to ship table wine directly to consumers in Montana must also hold a current direct shipment endorsement, as specified in 16-4-1102, MCA. The direct shipment endorsement has an annual fee of \$50.

(3) remains the same, but is renumbered (5).

AUTH: 16-1-303, 16-4-1103, MCA

IMP: 16-4-107, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.13.401 based on the passage of House Bill 402, L. 2013. House Bill 402 allows wineries to obtain a direct shipment endorsement from the department to ship table wine directly to consumers within the state.

The proposed amendment in (1) adds clarification that a foreign winery or importer that is not otherwise licensed must first register with the department in order to ship table wine into Montana. The proposed amendment is intended to enhance understanding within the industry by specifying the registration renewal date and providing notice that a registration fee is required. New (2) relocates a statement being stricken from (1) and adds the word "foreign" for clarity.

The proposed amendments to new (3) will provide clear notification to wineries and importers on how the registration fee is determined the first year and each year thereafter. For the first year, the registration fee is based on the volume the registrant intends to ship that year because there is no prior shipment data upon which to base a fee. For the following years, the registration fee is based on the past year's actual shipments. Basing the renewal fee on past shipment volume was selected because it is a relatively accurate indication of intended shipment volume for the renewal year. This will simplify the renewal process for wineries and importers by limiting determination of the registration fee to speculation of potential shipment volume in the first year only.

New (4) is being proposed to notify foreign wineries that in order to ship table wine to consumers in Montana, they must hold a current direct shipment endorsement. The direct shipment endorsement fee is included in the rule as a point of reference for the industry. The statute citations being added are in reference to the new law this rule is being amended to implement.

#### 42.13.402 WINE DISTRIBUTOR'S MONTHLY REPORTS AND TAX RETURN

(1) Each table wine distributor shall pay any tax due and file with the department a table wine distributor's monthly tax return on Form WIT, as required by pursuant to 16-1-411 and 16-3-411, MCA. The form must be filed regardless of whether or not the distributor has sold any wine during a that month.

(2) and (3) remain the same.

(4) Each table wine distributor shall monthly file Form WIT-3 to report the total amount of table wine sold to retailers, as required by 16-3-404, MCA.

AUTH: 16-1-303, MCA

IMP: 15-1-216, 16-1-411, 16-3-404, 16-3-411, 16-4-406, MCA

REASONABLE NECESSITY: The department proposes to amend ARM

42.13.402 to update the statutes citations in (1) and to add information that was previously missing from the rule. Additionally, table wine distributors are not only required to report certain sales information, but are also required to pay the tax on wine sold to retailers. Therefore, the department is proposing to expand the title of the rule to more accurately reflect the rule content.

New (4) is being proposed to provide table wine distributors with the specific name of the form that is required to be filed for sales to retailers. Identifying the name of the form within the rule is intended to eliminate confusion and increase compliance.

42.13.404 WINE REPORTING REQUIREMENTS (1) ~~Each~~ On or before the 15th of each month, a winery located outside of that sells table wine directly to a retailer, consumer, or table wine distributor in Montana shall complete pay any tax due and file with the department monthly reports on forms provided by the department, with the following information reports for the preceding month:

(a) ~~A winery that sells Form WIT, reporting the total amount of table wine shipped directly to a retailer located in Montana must pay the tax due, pursuant to 16-3-411, MCA, on or before the 15th of each month for wine sold in the previous month and complete Montana tax return Form WIT; and retailers and consumers, pursuant to 16-1-411 and 16-3-411, MCA;~~

(b) ~~A winery that sells Form WIT-3, reporting the amount of table wine shipped directly to a each retailer and consumer, shall report on or before the 15th of each month the amount of wine sold directly to retailers in the previous month on Form WIT-3, pursuant to 16-3-411 and 16-4-1102, MCA; and~~

(c) Form WSM, reporting the amount of table wine shipped directly to each table wine distributor, pursuant to 16-3-411, MCA.

(2) ~~Each retailer that purchases wine from an out-of-state winery shall report the amount of wine purchased on Form WIT-2 On or before the 15th of each month, each retailer shall file a Form WIT-2, reporting the amount of table wine purchased from wineries.~~

(3) ~~Each winery located in Montana that is licensed to do business in the state shall, each quarter, report to the department the quantity of wine sold to distributors and the name and address of distributors on or before the 15th of the following month.~~

(4) ~~Any winery located in Montana selling directly to the consumer or the retailer must pay tax on or before the 15th of each month for wine sold in the previous month pursuant to 16-1-411, MCA, and complete Montana Form WIT.~~

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-3-411, 16-4-107, 16-4-1101, 16-4-1102, 16-4-1103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.404 based on the passage of House Bill 402, L. 2013. House Bill 402 places the reporting and tax requirement on wineries for direct shipments of table wine made to a consumer in the state of Montana. The proposed amendments to this rule incorporate the changes in statute and enhance the readability of the rule for the industry. Additionally, 16-1-411, MCA, is being added to the implementing citations.

The proposed amendments in (1) specifically address the reporting requirements to be made by the winery. Referencing the forms and the information required on them is intended to enhance knowledge within the industry and help eliminate confusion. The proposed amendment in (2) specifically addresses the reporting requirements to be made by the retailer. The amendments are being proposed to reduce confusion and increase compliance while providing a check and balance process to ensure that the distribution of table wine within the state conforms to the requirements of the law. The department further proposes to strike (3) and (4) as the content of those sections is being amended into (1) and (2).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov and must be received no later than November 18, 2013.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 402, L. 2013, Representative Chuck Hunter, was initially notified by regular mail on May 16, 2013, and subsequently notified on September 19, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendments to the rules contained in this notice will not significantly or directly impact small businesses.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Mike Kadas  
MIKE KADAS  
Director of Revenue

Certified to Secretary of State October 7, 2013